IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

:

LESLAW J. KORNECKI, : Civil Action

Plaintiff, :

: No.: 02-CV-3708

v.

:

TEMPLE UNIVERSITY HOSPITAL,

Defendant.

:

DEFENDANT TEMPLE UNIVERSITY HOSPITAL'S PRE-TRIAL MEMORANDUM

I. NATURE OF THE ACTION

Plaintiff Leslaw Kornecki was formerly employed by Defendant Temple University Hospital ("Temple" or "the Hospital"). He brought this action after his employment was terminated pursuant to Temple's work rules for downloading and purchasing pornography on Temple computers during work time. Plaintiff alleges that Temple retaliated against him for exercising his Family and Medical Leave Act rights in violation of 29 U.S.C.A. § 2611.

II. COUNTER STATEMENT OF FACTS:

Temple disputes the facts and/or the characterizations as set forth in plaintiff's pretrial memorandum. The facts of this case are as follows:

This case stems from the Hospital's discharge of plaintiff on March 4, 2002 after Hospital's investigation

revealed that plaintiff bought pornographic movies and accessed, viewed, and downloaded pornography to Temple computers during his employment. This misconduct qualified as "misuse of Temple property" [computers] and "conduct unbecoming a Temple employee," which are explicit grounds for discharge under Temple University Hospital's personnel policies. Although Mr. Kornecki admits participating in this conduct, at least to some degree, he denies that he accessed, viewed and downloaded <u>all</u> of the pornography that is apparent on his computers. Regardless of plaintiff's equivocating, there is no dispute that he engaged in conduct for which the Hospital appropriately discharged him pursuant to Temple work rules.

The discovery of the pornography and the related investigation occurred as follows: On December 31, 2001, Elaine Joyce, a nurse who received plaintiff's former Gateway laptop computer, discovered multiple pornographic images and files on that computer. She reported it to her supervisor, Marcia Redden, who in turn, began the process of investigating the source of the pornography.

After an investigation over the course of the next several months, and with the assistance of David Chamberlain, associate director of technical services, hundreds of pornographic images were discovered on plaintiff's Gateway laptop. Mr. Chamberlain also determined that Mr. Kornecki had

used Temple computers and his Temple e-mail address to order pornographic movies. Mr. Chamberlain also reviewed the World Wide Web log, which revealed that Mr. Kornecki's computers had accessed multiple hardcore pornographic sites. Mr. Chamberlain also found numerous pornographic images on Mr. Kornecki's new Sony laptop, a computer that Mr. Kornecki stated no one else had access to other than him.

Plaintiff at first insisted that the pornography was someone else's doing, however when he was confronted with the evidence, he eventually admitted to accessing some of the pornography. Specifically, he now admits to viewing pornographic websites on at least thirty (30) separate occasions and purchasing three videos entitled: (1) "Assbusters"; (2) "Climax Shots #2: New Booty"; and (3) "Euro Hardriders 3." The evidence, however, shows that these three pornographic DVD's were not the only ones he purchased and Mr. Kornecki's credibility has been compromised.

Based on plaintiff's admission, the evidence available at the time of the hearing, and the nature of the pornography being viewed, and since Temple policies allow supervisors to exercise discretion in the discipline of employees for serious

An argument that rings hollow, since Plaintiff admitted to providing others with his log in or logging other computer users on as him, and therefore, by Temple policy, was responsible for their conduct.

violations of Temple rules, and given that progressive discipline in these serious circumstances are not required, Temple terminated Mr. Kornecki on March 4, 2002.

On April 12, 2002, Temple reviewed Mr. Kornecki's termination and found it to be warranted.

III. COUNTER STIPULATED FACTS²

- 1. In July 1998, Temple University Hospital hired Mr. Kornecki.
- 2. On March 4, 2002, Temple University Hospital fired Mr. Kornecki for (1) misuse of Temple property, and (2) conduct unbecoming a Temple employee.
- 3. On April 12, 2002, after review of the facts and further investigation and after giving plaintiff an opportunity to present his point of view in a grievance hearing, Temple University Hospital determined Mr. Kornecki's termination was warranted.

IV. WITNESSES:

Liability:

Leslaw J. Kornecki c/o George Bochetto, Esquire 1524 Locust Sreet Philadelphia, PA 19106

Will admit to, among other things, accessing pornography during work hours, using Temple equipment.

² Plaintiff has not complied with providing numbered paragraphs of proposed stipulated facts, and therefore, we cannot specify agreement or disagreement on proposed stipulations.

Marcia Redden c/o Neil J. Hamburg, Esquire Hamburg & Golden, P.C. 1601 Market Street, Suite 3310 Philadelphia, PA 19103

Will testify, among other things, as to the decision to terminate plaintiff and the investigation of plaintiff's pornography use.

Elaine Joyce c/o Neil J. Hamburg, Esquire Hamburg & Golden, P.C. 1601 Market Street, Suite 3310 Philadelphia, PA 19103

Will testify, among other things, as to her discovery of plaintiff's pornography.

David Chamberlain c/o Neil J. Hamburg, Esquire Hamburg & Golden, P.C. 1601 Market Street, Suite 3310 Philadelphia, PA 19103

Will testify, among other things, as to the investigation of Mr. Kornecki's computers and the hearing on Mr. Kornecki's appeal of the termination decision.

James Mohan c/o Neil J. Hamburg, Esquire Hamburg & Golden, P.C. 1601 Market Street, Suite 3310 Philadelphia, PA 19103

Will testify, among other things, as to the decision to terminate plaintiff and the hearing on Mr. Kornecki's appeal of the termination decision.

Michael J. Grady c/o Neil J. Hamburg, Esquire Hamburg & Golden, P.C. 1601 Market Street, Suite 3310 Philadelphia, PA 19103 Will testify, among other things, as to the decision to terminate plaintiff and the hearing on Mr. Kornecki's appeal of the termination decision.

Joseph Ralston c/o Neil J. Hamburg, Esquire Hamburg & Golden, P.C. 1601 Market Street, Suite 3310 Philadelphia, PA 19103

Will testify, among other things, as to the decision to terminate plaintiff and the hearing on Mr. Kornecki's appeal of the termination decision.

Michelle Hackett c/o Neil J. Hamburg, Esquire Hamburg & Golden, P.C. 1601 Market Street, Suite 3310 Philadelphia, PA 19103

Will testify, among other things, as to Temple's FMLA application procedures, and Mr. Kornecki's application.

Richard Lutman c/o Neil J. Hamburg, Esquire Hamburg & Golden, P.C. 1601 Market Street, Suite 3310 Philadelphia, PA 19103

Will testify, among other things, about human resources policies, procedures and discipline.

Adam Ferrero c/o Neil J. Hamburg, Esquire Hamburg & Golden, P.C. 1601 Market Street, Suite 3310 Philadelphia, PA 19103

Will testify, among other things, as to the authenticity of the Temple web logs.

Damages:

Leslaw J. Kornecki c/o George Bochetto, Esquire 1524 Locust Sreet Philadelphia, PA 19106

V. EXHIBITS:

Description of Exhibits		XHIBITS:	D 1 (1 AE 1914)
Composition	Exh. No.		
Composition	1.		Kornecki's Temple Employment Application & Resume
3. TEMPLE Composition		0001-0008	
3. TEMPLE Composition		TEMPLE	**
3. TEMPLE 00090-00093 Kornecki Initial Personnel Action Authorization	2.		Kornecki Initial Job Description - Temple
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Exh. No.	Bates No.'s	Description of Exhibits
	444	1
23.	TEMPLE	Gateway Lap Top Pornographic Picture - 08/10/00 1:12 pm
	445	
24.	TEMPLE	Gateway Lap Top Pornographic Picture - 08/10/00 1:13 pm
	446	
25.	TEMPLE 447	Gateway Lap Top Pornographic Picture - 08/10/00 1:13 pm
26.	TEMPLE	Gateway Lap Top Pornographic Picture - 08/10/00 1:15 pm
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27.	TEMPLE	Gateway Lap Top Pornographic Picture - 08/10/00 2:51 pm
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Exh. No.	Bates No.'s	Description of Exhibits
49.	TEMPLE	Gateway Lap Top Pornographic Picture - 06/18/01 3:43 pm
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51.	TEMPLE	Gateway Lap Top Pornographic Picture - 06/18/01 3:44 pm
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52.	TEMPLE	FlashPSM Gateway Lap Top Picture - 06/19/01 10:47 am
	458	, 1 1
53.	TEMPLE	Gateway Lap Top List of .JPG Files Sorted by Filename
	267-281	
54.	TEMPLE	Gateway Lap Top List of .JPG Files Sorted by Date
	247-266	
55.	TEMPLE	Desktop Internet Sites Visited from 9/6/01-9/14/01
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56.	TEMPLE 517.522	Desktop Internet Sites Visited from 9/24/01-10/25/01
57.	517-533 TEMPLE	Dockton Internet Sites Visited from 10/20/01 11/20/01
37.	534-553	Desktop Internet Sites Visited from 10/30/01-11/20/01
58.	TEMPLE	Desktop Internet Sites Visited from 11/28/01-12/30/01
56.	554-579	Desktop internet sites visited from 11/26/01-12/30/01
59.	TEMPLE	Desktop Internet Sites Visited from 12/31/01-1/26/02
37.	580-605	Besites internet sites visited from 12/31/01 1/20/02
60.	TEMPLE	Desktop Internet Sites Visited from 1/28/02-2/22/02
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61.	TEMPLE	Samples for Sony Lap Top - No Date & Time Information
	230-243	
62.	TEMPLE	Sony Lap Top Pornographic Picture - 12/27/01 2:43 pm
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63.	TEMPLE	Sony Lap Top Pornographic Picture - 12/28/01 12:23 pm
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64.	TEMPLE 00416	Sony Lap Top Pornographic Picture - 1/7/02 12:34 pm
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76.	TEMPLE	Sony Lap Top Pornographic Picture - 1/22/02 3:44 pm
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83.	TEMPLE	Sony Lap Top Pornographic Picture - 1/23/02 4:10 pm
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84.	TEMPLE	Sony Lap Top Pornographic Picture - 1/23/02 4:11 pm
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85.	00440	Sony Lap Top Pornographic Picture - 1/23/02 4:11 pm
86.	TEMPLE	Sony Lap Top Pornographic Picture - 1/23/02 4:13 pm
00.	00419	Sony Eup Top Fornograpine Fletare 1/25/02 4.15 pm
87.	TEMPLE	Sony Lap Top Pornographic Picture - 1/23/02 4:17 pm
	00428	
88.	TEMPLE	Sony Lap Top Pornographic Picture - 1/23/02 4:22 pm
0.0	00434	C I T D 1: D: 1 1/22/02 1.25
89.	TEMPLE 00423	Sony Lap Top Pornographic Picture - 1/23/02 4:25 pm
90.	TEMPLE	Sony Lap Top Pornographic Picture - 1/28/02 12:44 pm
70.	00409	Sony Eup Top Fornograpine Fletare 1/20/02 12.44 pm
91.	TEMPLE	Sony Lap Top Pornographic Picture - 1/28/02 12:45 pm
	00418	
92.	TEMPLE	Sony Lap Top Pornographic Picture - 1/28/02 12:46 pm
	00429	
93.	TEMPLE 00441	Sony Lap Top Pornographic Picture - 1/28/02 12:48 pm
94.	TEMPLE	Sony Lap Top Pornographic Picture - 1/28/02 12:49 pm
24.	00420	Sony Lap 10p 1 omograpme 1 leture - 1/20/02 12.47 pm
95.	TEMPLE	Sony Lap Top List of .JPG Files Sorted by Date
	358-408	The state of the s
96.	TEMPLE	Temple University Work Rules
	334-346	
97.	TEMPLE	Kornecki Receipt of Temple University Work Rules
98.	0019 TEMPLE	Kornecki's FMLA Request
70.	0347-0351	Koniccki S Fivil A Request
99.	TEMPLE	Temple's Approval of Kornecki's FMLA Request
	0352	
100.	TEMPLE	Temple University Work Rules Updated 11/97
	0461-0473	
101.		Unemployment Comp / Claimant Questionnaire
102.		Unemployment Comp / Employment Separation Questionnaire

Exh. No.	Bates No.'s	Description of Exhibits
103.		Unemployment Comp - Notice of Determination
104.		Plaintiff's Damages Calculation
105.		Kornecki 2001 Tax Return
106.		Kornecki 2000 Tax Return
107.		Kornecki 1999 Tax Return
108.		Kornecki 1998 Tax Return
109.		E-mail from Kornecki to Terry Gosso - dated 4/29/02
110.		Letter dated 10/3/00 from HBO to Marcia Redden describing Main
		User Level 3 Course - on 8/8/00-8/9/00
111.		Letter dated 3/7/00 to Marcia Redden describing Project Planning
		and Sched Analy on 2/29/00-3/1/00
112.		Letter dated 6/19/00 to Marcia Redden describing Project Planning
		and Sched Analy on 6/13/00-6/16/00
113.		E-mails from M. Redden to D. Chamberlain March 2002
114.		Kornecki's Complaint
115.		Temple's Interrogatories to Kornecki
116.		Kornecki's Answers to Temple's Interrogatories
117.		Temple's Request for Production of Documents to Kornecki
118.		Kornecki's Response to Temple's Document Request
119.		Letter from G. Bochetto to J Marshall dated 5/17/02
120.		E-Mail from C. O'Donnell to Kornecki dated 5/3/02
121.		Letter from C. O'Donnell to Kornecki dated 5/9/02
122.		Notes prepared by Kornecki dates April 12, 2001
123.		Outlook Express Screen printouts for Kornecki account
124.		Kornecki 2002 Tax Return
125.		Kornecki 2003 Tax Return
126.	TEMPLE	11/07/00 Pornography order of Watcher 2
127	0639 TEMPLE	11/07/00 C C
127.	0640-0641	11/07/00 Confirmation of Order of Watcher 2
128.	TEMPLE	10/16/00 Pornography Order – "Hit Her in the Shitter" & "Angry
120.	0642	Anal #2"
129.	TEMPLE	11/13/00 Confirmation of Pornography Order – 555 Cumshots
120	0643-0644 TEMPLE	10/5/00 C5
130.	0645-0646	10/5/00 Confirmation Pornography Order – Watcher 3
131.		Image Showing Watcher 2 Box Cover
132.	TEMPLE	Color copies of pornographic images found on Mr. Kornecki's
	0647-0852	Temple issued computers.

VI. ESTIMATED TRIAL TIME:

Temple estimates that the trial will take approximately 3 to 4 days.

Respectfully Submitted,

(215) 255-8590

/s/ NEIL J. HAMBURG
NEIL J. HAMBURG
Id. No. 32175
HAMBURG & GOLDEN, P.C.
1601 Market Street, Suite 3310
Philadelphia, PA 19103-1443

Counsel for Temple University Hospital

CERTIFICATE OF SERVICE

I, Neil J. Hamburg, hereby certify that defendant

Temple University Hospital's Pre-Trial Memorandum has been filed electronically and is now available for viewing and downloading from the Court's Electronic Case Filing System. I further certify that a copy of the foregoing Pre-Trial Memorandum was served by regular mail on May 8, 2006, on the following:

George Bochetto, Esquire Bochetto & Lentz, P.C. 1524 Locust Street Philadelphia, PA 19106 Attorney for Plaintiff, Leslaw Kornecki

/s/ NEIL J. HAMBURG
NEIL J. HAMBURG
HAMBURG & GOLDEN, P.C.